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File No. O - Endowments 47

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Legal DEPARTMENT

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Subject:—

Opinions under the Charitable Endowments Act 1890

P. 19 E.

File No. O. Endowments/47

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department File No. O. Endowments/47.

Serial No.	Compilation No.	Subject	Pages
		The Charitable Endowments Act, 1890.	
1.	U.D.R.I.No. 1635 12/2/1947.	Donation of Rs.5 lacs by Dr. S.S.Ghady for a Technical Institute at Surat.	1-4.
2.	O.NO. 2465 13/3/1947.		
2.	O.no. 2990 27/3/1947.	Scheme for starting an educational institution to be named after Dr.Sorabji Ghandy and Dr.S.S.Ghandy execution of Deed Bill in connection with by Dr. Ghandy.	5-6.
3.	O.No. 171 8/4/47	Whether Govt. can be considered an institution or association doing similar work within the meaning of clause of the Trust.	7-8.
4.	R.I.No. 5923 5/6/47	Re.The Sir Barrow Elis Fund and the C.B.Izon Fund connected with the School of Industry at Ratnagiri-whether the administration of the two Funds can be transferred to the Director of Industries particularly in view of the fact that the Dist. Local Board is not agreeable to such a transfer.	9-12.
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5	O.No. 297 13/8/1947.	Proper management of temples and their properties through a trust created by statute.	13-22.
6.	R.I.No. 12775 21/10/1947	G.R.R.D.No.S.101/4477 45dt.18/10/47. Religious and Charitable Endowment Trust propertiesbeloning to the temple of Lalji Maharaj at Gajera tal.Jambusar.	23-24
7.	R.I.No. 12910 27/10/1947.	G.R.R.D.No.S.100/45238 dt.22/10/47. Trust Properties belonging to the Dhawadashi Devasthen Taluka Satara.	25-26.
8.	R.I.No. 12912 27/x/1947.	G.R.R.D.No.S.101/43145 dt.22/10/1947. Re. Trust Properties belonging to Shri Ram Temple at Karad Dist.Satara.	27-28

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2, Dr. S.°. Ghandy has offered to donate Rs. 5 lacs lying in Calcutta Jute shares for a technical Institute at Surat. He proposed that and agreement be drawn between Government and himself that he would hand over the Shares worth Rs. 5 lacs to the "ank of India "td., Surat, for that bank to sell them and to hold the proceeds on Government a account. On this proposal Government on theadvice of the R.L.A. contained in his opinion No. 268 confl. dated the 22nd October 1946 suggested to the donor that the proposal was not sound and suggested the course contained in the letter at p. 51 ante subject to certain conditions. After some time "overnment in their letter in the Educational Department "o. 7896, dated the 13th January 1947, inter alia suggested a proposal to the donor for his consideration.

The proposal was that a technical Institute at Surat on suitable new premises be started out of the money donated by Dr. Ghandy. Government also put forth for the consideration of Dr. Ghandy that the Victoria Jublibe Technical Institute, at Bombay which is introducing degree courses in Mechanical and Electrical Engineering from this year need and amount of 3½ lakhs for the necessary equipement, and the authorities will consider favourably any donation like his and in return name thenew block of building after his father and himself. And that after meeting the immediate non-recurring cost a part of the donation may be utilished an Endownment Fund for a chair in the Engineering subject, which would also be named after his father and himself. The donor was further requested to consider the proposal which this Government has decide to constitute

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to be known as "Private Donation and contributions Fund "to which all donations and contributions from the public will subject to the acceptance of Government, be received and credited. Dr. Gandhy in his letter dated the 20th January 1947 at p.89 ante accepted the Government proposal of establishment of a Technical Institute at Surat in suitable new premises on the outskirts of the City to be named after Dr. Sorabji Gandy and Dr. Saresh Ghandy. He further proposes to sell the shares in about 6 months, and to credit the sale proceeds to the Private Donations and Contributions Fund with certain conditions.

On the desire of H.P.M. to know whether the offer of donation by Dr. Ghandy and its acceptance on the part of Government is complete these papers are referred to the R.L.A. for advice.

3. The question for the consideration of the R.L.A. is -

(i) Whether the offer to donate by Dr.Ghandy and its acceptance by Govt. is complete; and

(ii)As to the manner in which the offer and acceptance may be recorded in a G.A.

Dr. Ghandy has offerred to donate a sum of Rs. 5 lacs for establishing a Technical Institute at Surat.

"The advancement and propogation of education and learning generally are charitable purposes. So also the establishment and support of colleges, schools, professorships, fellowship, lectureship, scholarsips and prizes and the providing of school masters," (Halsbury's law of England, Second Edition Vol. 4, s. 153). Dr. Ghandy's intention in is beyond doubt charitable.

"Assurance in favour of charity generally take

Office of the R.L.A.

As pointed out by the R.L.A. in his last opinion No. 268-Confl., dated the 22nd October 1946 an agreement to donated for a charitable purpose is not enforceable at law as a mere promise to give in charity is nudum pactum and cannot be enforced. Consequently the offer made by Dr. Ghaddy even if accepted by Government will constitute no binding contract. Therefore Government may at this stage merely inform Dr. Ghaddy of the acceptance of his offer and, after he has handed over the money, issue a Government Resolution stating the details about the offer and acceptance.

Id/- D.V.
Remembrancer of Legal Affairs.

U.S.R. to E.D.No. 2465, dated the 13th March 1947.

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Dr. Ghandy may execute a Deed Poll by way of a declaration of trust constituting himself a trustee of the said shares declaring that he would hold the said shares or the sale-proceeds thereof upon trust to hand the same over to Government for the purposes of a scheme for startingan educational institutting to be named after Dr. Sorabji Ghandy and Dr. Sarosh Sorabji Ghandy, such scheme to be settled and agreed upon between Government and Dr. Ghandy within a spcified time; and in the event of no such schme being settled and /or agreed upon between the Government and Dr. Ghandy within the time so specified to hand over the sale-proceeds together with the accretions thereto to the Trustees of Parsee Panchayat, Bombay for being utilised by them for such charitable purposes as they in their absolute discretkion think proper.

Government will not be a necessary party to this document and by the time the shares are sold out by Dr. Ghandy on the trust account, Government may be able to place its scheme before Dr. Ghandy and get his approval. As soon as the schemem is agreed upon between the parties sale-proceeds together with the accrations thereto may be credited to the Donation Account and a formal agreement entered into between Government and Dr. Ghandy incorporating several terms and conditipns in the scheme.

Id/- D.V.V.
Remembrancer of Legal Affairs.

U.R. to E.D., No. 2990, dated the 27th March 1947.

JPS. 16/5/53.
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Under clause 3 of the Trust after the death of the settler and his wife the trustees are empowered "to hand over the corpus of the said Trust Fund together with all its accretions of interest dividend and income to some Institution or Association doing work similar to the work for which the interest dividend and income is hereby agreed to be expended or spent on such terms and conditions as the Trustees may think proper". Under clause 2 of the Trust the interest dividend and income can be spend for the use and benefit and for the relief of persons afflicted from flood, fire or famine in India and generally to use the same for any one or more of the purposes aforesaid or any other purpose of similar charitable nature wich the Trustees may in their absolute discretion think fit. It appears that both the settlor and his wife are dead and the trustees desire to hand over the amount to Government if Government is prepared to utilise the money for the purpose mentioned in clause 2 of the Trust. The question for the consideration of the R.L.A. is whether Government can accept the amount.

The purpose mentioned in clause 2 of the Trust are charitable and consequently it is to be treated as a fix gift to charity. The main question for consideration is whether the Bombay Government can be considered an institution or association doing similar work within the meaning of clause 3 of the Trust, that is to say, doing the work of giving relief to persons afflicted from flood, fire or famine in India. The word "institution" properly means an organisation organised or established for some specific purpose, though it is sometimes used in statutes and in common parlance in the sense of the building or establishment in which the business of a society is carried on (see Iyer's Law Lexicon p.601). An association is a body of persons acting together. The Bombay Government

appears to be neither an institution nor an association engaged in giving relief to persons afflicted from flood, fire or famine in India although it is one of its duties to provide such relief in the Bombay Province. It is permissible to the Trustees to apply to Government under the provisions of the Charitable Endowments Act, 1890 for an order vesting the trust funds in the Treasurer of Charitable Endowments and for having a scheme framed for the ~~administration~~ administration of the trust funds in accordance with the provisions of the Trust Deed. It is, however, desirable that the Trustees should first obtain the sanction of the Court under section 92 C.P.C. to the above proposal. This procedure would be in the interest of the Trustees themselves, for if they transfer the funds to Government without the sanction of the Court and if such transfer is considered to be contrary to the express directions in clause 3 of the Trust, the trustees would be guilty of the breach of trust.

Id/- D.V.Vyas.
8/4/47.
Remembrancer of Legal Affairs.

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5/6/47.

The case relates to the Sir Barrow Ellis Fund and the C.B. Izon Fund connected with the School of Industry at Ratnagiri. The administration of both theFunds is in the hands of the President, District Local Board, Ratnagiri. The control of the School has been transferred to theDepartment of Industries.

The question is whether the administration ofthe two Funds can be transferred to the Director of Industries particularly in view of the fact that theDistrict Local Board is not agreeable to such a transfer.

The history of the Ellis Fund is this. In 1888 the late Sir Barrow Ellis left by his will a sum of Rs.25,000 to the Government of Bombay to be applied by them in a befitting manner towards any object or objects of a permanent character for the benefit of the native inhabitants of the Ratnagiri District. Government decided that there was no better way of carrying out the donor's wishes than by promoting the welfare and usefulness of the Ratnagiri Technical School maintained by the District Local Board. The persons then administering the Fund were Mr. William Wilson Drew, Collector and ex-officio President of the District Local Board, Ratnagiri and Balvant Ramchandra Sahasrabudhe, Educational Inspector, Southern Division. They applied to Government for an order under section 4 of the Charitable Endownment Act, 1890, vesting the securities in theTreasurer of Charitable Endownments upon thefollowing terms: i.e., to collect or to draw the income or interest and pay it to the person or persons appointed to adminster the same under a scheme settled under section 5 of the Charitable

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Endowments Act, 1890. The vesting order was made under G.N.ED. No. 17434 of 11-9-1896.

The scheme was made under section 5 by G.N.E.D. No. 1735 dated 11-9-1896 as under:-

"The income of property so as aforesaid vesting in the Treasurer of Charitable Endowments for the Bombay Presidency shall be administered by the Collector and President of the District Local Board, ~~M~~Ratnagiri for the time being. In awarding the schorlarships the Collector and the President of the District Local Board of Ratnagiri shall be guided by such rules as he and the Director of Public Instruction with the approval of the Governor of Bombay in Council may from time to time agree upon regard being always had to the purposes herein before set out for which the Fund was given."

With the separation of the offices of the Collector and the President of the District Local Board, a modification of the original scheme was considered necessary. Accordingly, on an application by the Collector under section 6(1)(a) of Charitable Endownments Act, the scheme was modified by the deletion of all references to the Collector therin (Vide G.N.E.D. No. 4289 dated 12th August 1929). Subsequently accompanying G.R.E.D. No. 4289 dated 12th August 1929)
when the technical and industrial education went under the control of Director of Industries it was considered necessary to further modify the scheme by substituting the words "Director of Public Instruction" ~~xxxxxxxxxxxx~~ in the orginal scheme. This modification was carried out under G.N.E.D. No.4289 dated 18th December 1935 on an application made by the President of the District.

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With regard to Sir Barrow Ellis Fund which has already been vested in the Treasurer of Charitable Endowments, the proposed transfer of the Administration to the Director of Industries involves a modification of the Scheme already settled by Government. Under section 5(2) of the Charitable Endowments Act, 1890, Government may modify any existing schmeme or substitute another scheme in its stead on the application of and with the concurrence of the persons or persons mentioned in section 6, which provides that such application must be made, if the property is already held in trust for a charitable purpose, by the person acting in the administration of theTrust or where there are more persons than one so acting, then by those person or a majority of them. There is no provision in the Act whereby any other person can apply to Government for such modification or whereby Government can take up the initiative and act of its own accord.

With regard to the Izon Prize Fund the District Local Board, Ratnagiri, has been appointed as a trustee under the Indenture of 1899 and cannot be removed except by an order of a competent court, if it can be proved to the satisfaction of that court that the Local Board is guilty of breach of trust, negligence or gross misconduct or become unfit or incapable to act in thetrust or has accepted an in-consistent trust.

Id/- P. M. L.
19/6/47.
Remembrancer of Legal Affairs.

U.R. to E.& I.D., No. 6358 dated 19th June 1947.

JPE. 16/5/56.
4 copies.

Office of the R.J.S.

In his minute H.P.M. observes:-

" The writer argues that as Government has given up its secular neutrality by introducing an Act for the entry of Harijans into Hindu temples it should take further legal steps of putting the management of temples on a proper basis. At present temples have ceased to have any social religious or spiritual significance and are becoming centres of medievalism, ignorance and vic. On the other hand their capacity for good is unlimited. If the state is to be secular in character even in future Hindustan it should at least ensures the proper management of temples and their properties through a trust created by statute."

He has directed L.D. to note on this question and suggest reforms.

(2) Origin of temple endowments.

In the Vedas and in the ancient Smritis there is no mention of the founding of temples. It appears that the religion of the Vedas differs widely from of worship that prevailed in the vedic age were also widely different from that prevailing at present under popular practice. Max Muller says: "The religion of the Vedas knowns of no idols. The worship of idols is a secondary formation a later degradation of the more primitive worship of the ideal gods". In Manu's day the only religious teacher was the ascetic Sanyasi who through his desciples used to spread the light of widsom among the lay people. It is to Buddha that India owes the introduction of fixed places of worship and of ordained orders of

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preachers. The followers of Buddha pursued a policy which was resented by the orthodox. Temples for the worship of Siva and Vishnu were established at or about this time to circumvent the Buddhistic influence. The second period began with the advent of Sankara who founded mutts to fight blind orthodoxy and materialism. The vaishnavites, the Madhwas and the Saivites founded independent mutts where Dvaitic philosophy was taught. By this time the Puranas had gained a hold on the popular mind and the worship of the avatars of Vishnu and of the manifestations of Siva came to be regarded as the essential feature of religious life among the people. Rich endowments were made for the upkeep of the temples. But the priest capable of rendering services in these institutions had to be found. The archakas having been looked down upon could not be induced to serve in temples unless they were offered liberal grants of land and perquisites. Consequently rich endowments were granted to bind them to the service of the deity and these endowments were intended and in most cases expressed to be from generation to generation.

(8) Salient features of endowments on temples.

The distinction between religious and charitable endowment is of comparatively modern origin. In Vidypurna v. Vidyandhi (27 Mad 435) a distinction was drawn between temples and mutts, it being held that the custodian of a temple is a mere trustee, the property being vested in the presiding God as a juristic person but the head of a mutt

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is not a mere trustee but a corporation sole having an estate for life in the permanent endowments of the mutt and an absolute property in the income derived from its offerings subject only to the duty of maintaining the institution. The religious foundations known as debutter, devastangmas or temples are the most numerous in India and have the largest endownments in the shape of lands, assignment of public revenue and jewellery. These institutions have been established for the spritiual benefit of the Hindu community in general or for that of particular sects or sections thereof. The management of these institutions is vested in one or more persons known as trustees, managers or superintendents. Their office is either hereditary or for life and, as a general rule they have beneficial interest in the endowments or income. The endowments are primarkily intendded for spritual puroses though indirectly and incidentally a good number of people derive material or pecuniary benefit therefrom as office holders, servants or objects of charity. The presiding idol is treated as a juristic person in whom the properties constituting the endowments are vested.

(4) Power of Government over endowments under the British Indian System.

In Rajah Muttu Ramling v. Perinnayaghum Pillai(1 I.A. 209 at 232) the Privy Council held that the British Government by virtue of its sovereign power possessed, as the former rulers of the country did, the right of endowments and to redress abuses in their management. Accordingly in 1810 in the Bengal Presidency and in 1817 in the Madras Presidency the British Government assumed control of all public endowments and benefactions, Hindu and Muhammadan and placed them under the charge of

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respective Boards of revenue. In Bombay the Bombay Regulation XVII of 1827 gave to the Collector a visitatorial power enabling him to enforce an honest and proper administration of religious endownments. the connection of Government in its executive capacity with Hindu and Muhammedan foundations was brought to an end for Bombay by the Bombay Act VII of 1863 and for Bengal and Madras by Act XX of 1863. In the southern part of the Bombay Presidency dedicated estates were expressly made inalienable by the Bombay Act II of 1863. Question arising under these laws between individual with reference to proprietary and pecuniary rights and as to alleged misappropriations, defalcation must necessarily be dealt with by thecivil courts which only can bring the requisite connections to bear on theenforcement of an honest discharge of their duty by the holders of dedicated estate (see Ghosh's Law of Endowments, p. 727).

(5) Laws applicable to religious and charitable endowments in the Province of Bombay.

In Bombay the Bombay Public Trusts Registration Act, 1935 governs trusts created or existing for a public purpose of a charitable or religious nature. The Statement of Objects and Reasons underlying that Act was in the following terms :

"There exists in this Presidency a large number of trusts created for public purposes of a charitable or religious nature for the benefit of the Hindu community which it has been represented to Government are frequently mismanaged and the income and funds relating to them are not properly controlled. There is a considerable body of public opinion in favour of

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makes provision for the appointment of Registrars of Public trusts. The Registrar has power to make inquiries to ascertain whether a trust is a public trust, the origin, nature and object of such trust, the amount of gross average annual income and expenditure of such trust and other particulars. Every manager of the property of a public trust is required to furnish the follwoing particular, namely, (1) the names and addresses of trustees and the manager and the mode of succession to the office of trustee (2) the description of the property, (3) the gross average annual income of the trust property and (4) the amount of the average annual expenditure in connection with the public trust. After submission of a statement by the manager stating the above particulars or after an enquiry made by the Registrar the latter is to record entries in the register of public trusts. Every managerof a public trust in respect of which an entry is recorded by the Registrar has to keep regular accounts of moveables or immoveable property received and of all encumbrances created on trust property received and of all encumbrances created on trust property and of all payments and alienations made on behalf of the public trust of which he is the manager. The accounts have to be balanced each year. Provision is made for the creation of a Public Trusts Administration Fund for each district or area for which a Registrar is appointed. The fund is applicable to the payment of charges and expenses incidental to registration of public trusts and the maintenance of registers of such trusts. There is also a provision requiring the publication of a list of public trusts and a statement of the sums standing to the credit of the Public Trusts Administration Fund.

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such trusts. There is at present no adequate legal machinery for establishing effective control over such trusts. The existing provisions of law are those contained in the Charitable and Religious Trusts Act, 1920 and in section 92 of the Civil Procedure Code. The scope of section 92 is extremely limited as, before taking any action thereunder, it is necessary for the aggrived party to satisfy the Advocate General that there had been a breach of trust. The Act of 1920 referred to above marks an improvement to remedy the state of affairs existing before 1920 as under this Act it is open to any person having an interest in any charitable or religious endowment to get the help of the District Court to find out the nature and objects of the trusts and to have accounts of the trust audited. There is however no obligation on the trustees of such trusts to keep any accounts at all or to have the accounts audited.

The object of the Bill is therefore to secure a further remedy by making compulsory the registration of more important trusts and the periodical submission and audit of their accounts. The total number religious and charitable trusts is large and some of them are of a petty nature. As at present advised Government do not consider it advisable to bring all these trusts within the purview of the Bill, which has therefore been so drafted as to restrict its operation only to those trusts which are created or exist for public purposes of a charitable or religious nature for the benefit of the Hindu community and of which the annual income is not less than two thousand rupees."

The Bill underwent certain changes in the course of legislation. The Act as ultimately passed applies in the first instance to public trusts created or existing solely for the benefit of the Hindu community or any section of such community and having an annual income of not less than Rs. 1000. The Act

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These are the main provisions of law governing the public trusts in Bombay. In other matters, that is, those not provided for in the Bombay Public Trusts Registration Act, 1935 the trustees are governed by the general law applicable to such trusts. For instance, where there is any breach of a trust created for public purposes of a charitable or religious nature or where the direction of the Court is deemed necessary for the administration of any such trust the remedy available would be to file a suit under section 92 C.P.C. to obtain a decree for (1)removing any trustee, (2) appointing a new trustee, (3) vesting any property in a trustee (4) directing accounts and inquiries, (5) declarming what proportion of the trust property or of the interest there-in shall be allocated to any particular object of trust, (6) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged (7) settling a scheme or (8) granting such other relief as the nature of the case may require.

(6) The provisions of the Bombay Public Trusts Registration Act, 1935 and of section 92 of the Civil Procedure Code no doubt apply to Hindu temple endowments, but the past experience has shown that they are hardly adequate to prevent wastage and mismanagement of these endowments. What is absolutely necessary to restore purity in the administration of those endowments and ensure proper application of the funds to their legitimate purposes for advancing the cause of religion, is to legislate for purging them of all evils by compulsorily framing schemes for their administration and controlling them by supervision through certain agency. Other Provinces have already taken steps in this direction. The Madras Hindu Religious Endowments Act, 1927 as amended from time to time

provides for the better administration and governance of certain Hindy religious endowments. Undef section 10 a Board is constituted. That Board is vested with powers of superintendence of all religious endowments and ofdoing all things which are reasonable and necessary to ensure that Maths and temples are properly maintained and that all religious endowments are proerly administered and duly appropriated for which they were founded or exist. Under section 20 Temples Committees are constituted for local areas or any class or classes of institutions in any local area. These committees are subordinate to the Board and are entitiled to exercise general superintendence over the temples for which they are constituted. Temples are divided into two categories (1) ordinary temple (2) excepted temples. The latter means and includes a temple, the right of succession to the office of the trustee or the offices of all trustees (where there are more trustees than one) whereof has been hereditary or the succession to the trusteeship whereof has been specially provided for by the founder. After providing for registration, management and maintenance of accounts of the religious endowments in general theAct makes special provisions about ordinary and excepted temples. In the case of ordinary temples the trustees are nonhereditary and the Committee is given power to appoint them. They are required to obey the orders of the Committee and of the Board and can be suspended removed or dismissed by the Committee. The trustee of a temple is required to submit to the Committee proposals for fixing the dittum or scale of expenditure in the temple and the amounts which should be allotted,

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to various objects or ceremonies connected with such templeor the proportions in which the income or other property of the temple may be applied to such objects or ceremonies. The trustee of every temple is required to submit to the Committee every year a budget of the temple. Power is given to the Board to settle schemes for non-excepted temples. In the case of excepted temples trustees are required to submit budgets and annual accounts and whenever the Board is satisfied that the trustee concerned has mismangged the endowments of such temple it can settle ascheme of administration for the endowments connected with such temple. Power is also taken for the cypres application of endowment or surplus.

The administrative department may be directed to examine the provisions of the Madras Act with reference to the position and kinds of temples in the Bombay Province and consider whether those provisions can be adapted to meet the needs of this Province with a view to putting the administration of the temple endowments on a sounder footing.

Id/- D. V. V.

Remembrancer of Legal Affairs.

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